



## **WELLNESS PROGRAMS AND FEDERAL LAW**

August 21, 2008

### **INTRODUCTION**

HB 133 requires the Health Reform Task Force to study:

- (1) promoting personal responsibility through:
  - (a) encouraging healthy behaviors and lifestyles to the full extent allowed by the Health Insurance Portability and Accountability Act; and
  - (b) making healthy choices; and
- (2) identifying federal barriers to state health system reform and seeking collaborative solutions to those barriers.

Programs for wellness and personal responsibility are allowed under our state law. Rep. Dunnigan amended Section 31A-23a-402 to clarify that incentives for behaviors that reduce claims expenses are not an unfair market practice. Under federal law the use of a wellness program is regulated under group health plan non-discrimination rules.

This presentation will briefly describe:

1. the federal law requiring non-discrimination in rules for eligibility for group health plans; and
2. the limited exception to the general rule against non-discrimination for a wellness program offered by a group health plan.

This presentation is a summary of the supplemental mailing sent to the Task Force from the U.S. Dept of Labor dated Feb 28, 2008 "Wellness Program Analysis". It can also be accessed on the Task Force website.

### **FEDERAL BARRIERS TO WELLNESS PROGRAMS**

Federal Law 29 CFR 2590.702 provides the following general rule:

"A group health plan, and a health insurer offering health insurance coverage in connection with a group health plan, may not establish any rule for eligibility of any individual to enroll for benefits under the terms of the plan or group health insurance coverage that discriminates based on any health factor that relates to that individual or dependent of that individual..." This general rule does not apply to certain limited situations, one of which is certain wellness programs.

Two important definitions in the non-discrimination rule are: "rules of eligibility" and "health factor". The definition of "rules of eligibility" includes co-pays, deductibles, premiums and cost sharing mechanisms. The definition of "health factor" includes claims experience, genetic discrimination, health status, and participation in certain activities such as high risk activities. A summary of the general rule with the definitions incorporated is: a group insurer may not impose

different premiums, co-pays or cost sharing or limit the eligibility of an enrollee based on the enrollee's bad habits, claims experience, or health, EXCEPT as permitted by the federal wellness program rules.

### **SUMMARY OF FEDERAL WELLNESS RULE**

The following is a brief description of when the federal limits on wellness programs apply and how the limits work:

An insurer is not limited by federal law if the health or wellness program is not based on achieving a health standard and if the wellness program is available to all similarly situated individuals. Some examples of programs not limited by federal law are :

- \* A program that reimburses the cost for membership at a gym with no requirement that the enrollee achieve any health outcome.
- \* A program that encourages preventive care by waiving co-pays for prenatal visits or well child care.
- \* A program that reimburses for smoking cessation with no requirement that the enrollee actually quit smoking.

If a wellness program is linked to achieving a health standard then the reward for meeting the standard is subject to the following five conditions:

1. Rewards for achieving the health standard "may not exceed 20% of the cost of employee only coverage under the plan" (20% applies to the cumulative value of all rewards in the group plan).
2. The program must be reasonably designed to promote health or prevent disease.
3. The program must give individuals eligible for the program the opportunity to qualify for the rewards under the program at least once a year.
4. The reward must be available to all similarly situated individuals unless the program provides a reasonable alternative standard.
5. The plan must include a disclosure similar to: "If it is unreasonably difficult for you to achieve the standards for the reward under this program, or if it is medically inadvisable for you to attempt to achieve the standards for the reward under the program, call us at \*\*\*\* and we will work with you to develop another way to qualify for the reward."